



MULTISTATE TAX COMMISSION

**MINUTES of
Income and Franchise Tax Uniformity Subcommittee Meeting**

Tuesday, March 5, 2013

1:00 p.m. Central Time

I. Welcome and Introduction

Robynn Wilson (AK), Chair of the Income and Franchise Tax Uniformity Subcommittee, opened the meeting. The following persons were in attendance:

Greg Matson, Shirley Sicilian, Roxanne Bland, Sheldon Laskin, Bruce Fort, Ken Beier, Les Koenig, Amyia McCarthy, Lila Disque	Multistate Tax Commission	Derek Bell	Montana Department of Revenue
Richard Cram, Bryan Vargas	Kansas Department of Revenue	Michael Fatale	Massachusetts Department of Revenue
Frank Hales	Utah State Tax Commission	Lennie Collins	North Carolina Department of Revenue
Louis Joe Gomez, Josh Daggett	New Mexico Taxation and Revenue Department	Phil Horwitz	Colorado Department of Revenue
Pam Evans, Jeff Vogt	Minnesota Department of Revenue	Nancy Prosser	Texas Comptroller of Public Accounts
Stewart Binke	Michigan Department of Treasury	Robynn Wilson	Alaska Department of Revenue
Chris Coffman	Washington State Department of Revenue	Ferdinand Hogroian	Council on State Taxation
Randy Tilley, Phil Skinner	Idaho State Tax	Deborah Bierbaum	AT&T

	Commission		
Wood Miller	Missouri Department of Revenue	Todd Lard, Charlie Kearns	Sutherland
Kelly Gilliken, Mike Gamble, Christy Vandevander, Craig Banks	Alabama Department of Revenue	Terry Fredericks	Sprint
Aaishah Hashmii	District of Columbia Office of Tax and Revenue		
Appearing by Phone			
Janelle Lipscomb	Oregon Department of Revenue	Don Jones	
Walter Anger	Arkansas Department of Finance and Administration	Pat Calore	Michigan Department of Treasury
Christy Comanita	Arizona Department of Revenue	Diann Smith	McDermott Emory
Dee Wald, Matt Peyrl	North Dakota Office of State Tax Commissioner	Matthew Mox	Baker McKenzie
Andrew Glancy	West Virginia State Tax Department	Amy Hamilton	State Tax Notes
Elliott Dubin	Multistate Tax Commission		

II. Public Comment Period

There were no public comments

III. Approval of Minutes of In-Person Meeting December 5, 2012; minutes of Teleconference Meeting February 5, 2013

All minutes were approved.

IV. Reports and Updates

a. Federal Issues Affecting State Taxation

Roxanne Bland, MTC counsel, presented her "Report on Pending Federal Legislation, 113th Congress." She noted that the Subcommittee on Constitutional, Commercial and Administrative Law has changed its name to the Subcommittee on Regulatory Reform, Commercial and Antitrust Law, and listed the new members, including a new chair. She also listed the members of the Senate Finance Committee, to which Bills

concerning state taxation are usually referred. No new legislation has been introduced.

b. Report on Commission Action on Uniformity Projects

Shirley Sicilian, MTC General Counsel, reported that a Public Hearing has been scheduled in late March for the Recommended Amendments to Compact Article IV [UDITPA]. Ms. Sicilian encouraged the states and members of the public to participate with public comment.

V. Project to Amend MTC Model Financial Institutions Apportionment Rule

Mr. Laskin presented his status report. The project concerns apportionment of income realized by financial institutions, which are excluded from UDITPA. However, the industry has changed due to deregulation of the industry and technological advances. The MTC work group, which is composed of representatives of MTC member states and representatives from the financial industry, has been meeting to consider (1) the definition of a financial institution; (2) the sourcing of financial institution receipts, and (3) whether the intangible financial institutions loan property should be retained in the property factor and, if so, the proper sourcing of these loans in the property factor. The current sourcing rule relies on SINAA considerations (solicitation, investigation, negotiation, approval, administration). The work group has completed its recommendations on the first two considerations and is focused now on the third, property factor, related issue. Karen Boucher (Deloitte Tax LLP) was present for public comment to express the views of the industry. In December, 2012, participating states asked that the working group take a fresh look at the property factor. Ms. Boucher stated that industry felt it had previously been settled that SINAA was to be left in place. The industry did not want to take a fresh look at eliminating the property factor or eliminating loans from the property factor.

During the committee discussion, Ms. Wald (ND) stated that she felt it is too difficult for the states to apply the SINAA factors. After some debate, Mr. Horwitz (CO) moved to have the working group look at the SINAA approach to see if it reflects what the working group wanted it to reflect and, if not, to consider an alternative approach to including the loans and possibly address the property factor and whether to include it at all. Mr. Horwitz moved that the work group consider the following:

Does SINAA reflect the policies behind the property factor? If not, should loans be retained in the property factor? If they should not be retained, should the property factor be included at all? If it is to be included, should there be alternative weighting for each of the factors?

The motion carried 16-0, with one abstention.

VI. Process Improvements Discussion

Shirley Sicilian, MTC General Counsel, and Lila Disque, Counsel, presented a PowerPoint outlining the proposed new format for the Uniformity web pages, specifically focusing on a document bank. Ms. Wilson expressed some interest in having the proposed "project dashboard" presented for the subcommittee at each meeting. Mr. Horwitz and Ms. Wilson recommended that, in the document library, we make sure to show the current version first and then outline historical versions. Both believed we should consider having the states report

which regulations they have adopted, and making this information available on the site, as well. The Subcommittee expressed enthusiasm for the recommendations. Staff was instructed to take the next steps toward implementing the proposal – identifying resources that would be needed and potential start date.

VII. **Possible New Project Regarding State Use of "Section 482" Authority**

Bruce Fort, MTC counsel, presented a background on the proposed project regarding states' ability to reallocate income and expenses to more accurately reflect related companies' income. Ferdinand Hogroian (COST) stated he has not received any further input suggesting that the proposal was warranted. The Tax Executives Institute (TEI) had submitted an opposition to the proposed project, stating that arms-length accounting is used by the federal government and internationally, and this proposal would increase complexity, duplicate federal efforts, and present a new standard that would be difficult to apply. Mr. Fort responded to TEI's objections. Mr. Fatale (MA) stated that, given the wide range of current state laws addressing the topic, it would be difficult to come up with a broadly applicable section 482 regulation that the states would be willing and able to adopt. Mr. Horwitz agreed, and moved not to initiate the project. The motion passed, with 17 ayes and 4 abstentions. Joe Huddleston, MTC Executive Director, stated that the issue of Section 482 audits has been raised by a number of states, and he will be discussing this with the audit committee.

VIII. **New Business**

There was no new business

IX. **Adjourn**

At this time, Ms. Wilson stated she would entertain a motion to adjourn. Mr. Horwitz so moved.